

Message Text

UNCLASSIFIED

PAGE 01 IAEA V 01564 01 OF 03 241550Z

47

ACTION OES-05

INFO OCT-01 EUR-12 IO-10 ISO-00 ACDA-10 CIAE-00 INR-07

L-02 NSAE-00 NSC-05 FEAE-00 SSO-00 INRE-00 NSCE-00

SS-15 SP-02 SAM-01 SAJ-01 (ISO) W

----- 030614

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FM USMISSION IAEA VIENNA

TO SECSTATE WASHDC IMMEDIATE 5522

INFO AEC GERMANTOWN IMMEDIATE

AMEMBASSY MADRID

AMEMBASSY MOSCOW

UNCLAS SECTION 1 OF 3 IAEA VIENNA 1564

EO 11652: N/A

TAGS: IAEA TECH PARM SP

SUBJ: TEXT OF IAEA/SPAIN SAFEGUARDS AGREEMENT

DRAFT AGREEMENT BETWEEN THE INTERNATIONAL ATOMIC ENERGY
AGENCY AND THE GOVERNMENT OF SPAIN FOR THE APPLICATION OF
SAFEGUARDS

WHEREAS THE INTERNATIONAL ATOMIC ENERGY AGENCY (HEREIN-
AFTER REFERRED TO AS "THE AGENCY") IS AUTHORIZED BY ITS
STATUTE TO APPLY SAFEGUARDS AT THE REQUEST OF A STATE TO
ANY OF THAT STATE'S ACTIVITIES IN THE FIELD OF ATOMIC
ENERGY;

WHEREAS THE GOVERNMENT OF SPAIN (HEREINAFTER REFERRED
TO AS "SPAIN") HAS REQUESTED THE AGENCY TO APPLY ITS SAFE-
GUARDS SYSTEM WITH REGARD TO NUCLEAR MATERIAL PROVIDED TO
SPAIN BY THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST
REPUBLICS (HEREINAFTER REFERRED TO AS "THE SOVIET UNION");

WHEREAS THE BOARD OF GOVERNORS OF THE AGENCY
(HEREINAFTER REFERRED TO AS "THE BOARD") HAS ACCEDED TO
THAT REQUEST ON;

UNCLASSIFIED

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PAGE 02 IAEA V 01564 01 OF 03 241550Z

NOW, THEREFORE, THE AGENCY AND SPAIN HEREBY AGREE AS FOLLOWS:

DEFINITIONS

SECTION 1. FOR THE PURPOSE OF THIS AGREEMENT:

(A) "EFFECTIVE KILOGRAMS" MEANS:

(A) IN THE CASE OF PLUTONIUM, ITS WEIGHT IN KILOGRAMS;

(B) IN THE CASE OF URANIUM WITH AN ENRICHMENT OF 0.01 (1 PERCENT) AND ABOVE, ITS WEIGHT IN KILOGRAMS MULTIPLIED BY THE SQUARE OF ITS ENRICHMENT;

(C) IN THE CASE OF URANIUM WITH AN ENRICHMENT BELOW 0.01 (1 PERCENT) AND ABOVE 0.005 (0.5 PERCENT), ITS WEIGHT IN KILOGRAMS MULTIPLIED BY 0.0001; AND

(D) IN THE CASE OF DEPLETED URANIUM WITH AN ENRICHMENT OF 0.005 (0.5 PERCENT) OR BELOW, AND IN THE CASE OF THORIUM, ITS WEIGHT IN KILOGRAMS MULTIPLIED BY 0.00005;

(B) "INSPECTORS DOCUMENT" SHALL MEAN THE ANNEX TO AGENCY DOCUMENT GC(V)/INF/39;

(C) "NUCLEAR MATERIAL" SHALL MEAN ANY SOURCE OR SPECIAL FISSIONABLE MATERIAL AS DEFINED IN ARTICLE XX OF THE STATUTE;

(D) "NUCLEAR FACILITY" SHALL MEAN

(A) A PRINCIPAL NUCLEAR FACILITY AS DEFINED IN PARAGRAPH 78 OF THE SAFEGUARDS DOCUMENT, AS WELL AS A CRITICAL FACILITY OR A SEPARATE STORAGE INSTALLATION; OR

(B) ANY LOCATION WHERE NUCLEAR MATERIAL IN AMOUNTS GREATER THAN ONE EFFECTIVE KILOGRAM IS CUSTOMARILY USED;

(E) "SAFEGUARDS DOCUMENT" SHALL MEAN AGENCY DOCUMENT INF/CIRC/66/REV.2.

UNCLASSIFIED

UNCLASSIFIED

PAGE 03 IAEA V 01564 01 OF 03 241550Z

UNDERTAKINGS BY SPAIN AND THE AGENCY

SECTION 2. SPAIN UNDERTAKES THAT THE NUCLEAR MATERIAL SUPPLIED BY THE SOVIET UNION AND ANY OTHER NUCLEAR MATERIAL REQUIRED TO BE LISTED IN THE INVENTORY, AS WELL AS ANY SPECIAL FISSIONABLE MATERIAL PRODUCED IN OR BY THE USE OF SUCH NUCLEAR MATERIAL, INCLUDING SUBSEQUENT GENERATIONS OF SUCH SPECIAL FISSIONABLE MATERIAL, SHALL NOT BE USED IN SUCH

A WAY AS TO FURTHER ANY MILITARY PURPOSE.

SECTION 3. THE AGENCY UNDERTAKES TO APPLY ITS SAFEGUARDS SYSTEM IN ACCORDANCE WITH THIS AGREEMENT TO THE NUCLEAR MATERIAL SUPPLIED BY THE SOVIET UNION AND ANY OTHER NUCLEAR MATERIAL LISTED IN THE INVENTORY, AS WELL AS ANY SPECIAL FISSIONABLE MATERIAL PRODUCED IN OR BY THE USE OF SUCH NUCLEAR MATERIAL, INCLUDING FUTURE GENERATIONS OF SUCH SPECIAL FISSIONABLE MATERIAL, TO ENSURE AS FAR AS IT IS ABLE THAT THE NUCLEAR MATERIAL SHALL NOT BE USED IN SUCH A WAY AS TO FURTHER ANY MILITARY PURPOSE.

SECTION 4. SPAIN UNDERTAKES TO FACILITATE THE APPLICATION OF SAFEGUARDS BY THE AGENCY AND TO CO-OPERATE WITH THE AGENCY TO THAT END.

INVENTORY

SECTION 5. THE AGENCY SHALL ESTABLISH AND MAINTAIN AN INVENTORY OF ALL NUCLEAR MATERIAL SUBJECT TO SAFEGUARDS UNDER THIS AGREEMENT ON THE BASIS OF THE NOTIFICATIONS AND REPORTS RECEIVED AND OF ANY OTHER ARRANGEMENTS MADE PURSUANT TO THIS AGREEMENT. THE INVENTORY SHALL BE DIVIDED INTO 3 PARTS:

(A) MAIN PART:

- (I) NUCLEAR MATERIAL SUPPLIED BY THE SOVIET UNION;
- (II) ANY OTHER NUCLEAR MATERIAL THE TRANSFER OF WHICH HAS BEEN NOTIFIED TO THE AGENCY PURSUANT TO SECTION 6(A)(II);
- (III) SPECIAL FISSIONABLE MATERIAL PRODUCED IN OR BY THE USE OF ANY OF THE NUCLEAR MATERIAL LISTED IN THE MAIN PART OF THE INVENTORY;
- (IV) NUCLEAR MATERIAL PROCESSED OR USED IN OR IN UNCLASSIFIED

UNCLASSIFIED

PAGE 04 IAEA V 01564 01 OF 03 241550Z

CONNECTION WITH ANY OF THE NUCLEAR MATERIAL LISTED IN THE MAIN PART OF THE INVENTORY;

- (V) NUCLEAR MATERIAL THAT HAS BEEN SUBSTITUTED IN ACCORDANCE WITH PARAGRAPH 25 OR 26(D) OF THE SAFEGUARDS DOCUMENT FOR ANY MATERIAL LISTED IN (I) TO (IV) ABOVE;

(B) SUBSIDIARY PART:

ANY NUCLEAR FACILITY WHILE IT PROCESSES, CONTAINS, USES OR FABRICATES ANY NUCLEAR MATERIAL LISTED IN THE MAIN PART OF THE INVENTORY;

(C) INACTIVE PART:

NUCLEAR MATERIAL WHICH HAS BEEN EXEMPTED FROM SAFEGUARDS AND NUCLEAR MATERIAL WITH REGARD TO

WHICH SAFEGUARDS HAVE BEEN SUSPENDED PURSUANT TO
SECTION 11.

THE AGENCY SHALL SEND COPIES OF THE INVENTORY TO SPAIN EVERY
TWELVE MONTHS AND ALSO AT ANY OTHER TIMES SPECIFIED BY
SPAIN IN REQUEST COMMUNICATED TO THE AGENCY NOT LESS THAN
TWO WEEKS IN ADVANCE.

NOTIFICATIONS AND REPORTS
SECTION 6.

(A) SPAIN SHALL NOTIFY THE AGENCY OF
(I) THE RECEIPT OF ANY NUCLEAR MATERIAL SUPPLIED
BY THE SOVIET UNION WITHIN TWO WEEKS OF ITS
TRANSFER INTO THE JURISDICTION OF SPAIN;
(II) THE RECEIPT FROM ANY OTHER STATE OF NUCLEAR

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PAGE 01 IAEA V 01564 02 OF 03 241524Z

47
ACTION OES-05

INFO OCT-01 EUR-12 IO-10 ISO-00 ACDA-10 CIAE-00 INR-07

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FM USMISSION IAEA VIENNA
TO SECSTATE WASHDC IMMEDIATE 5523
INFO AEC GERMANTOWN IMMEDIATE
AMEMBASSY MADRID
AMEMBASSY MOSCOW

UNCLAS SECTION 2 OF 3 IAEA VIENNA 1564

MATERIAL WHICH HAD BEEN LISTED IN THE MAIN
PART OF THE INVENTORY AND WHICH HAD BEEN
EXPORTED FOR CONVERSION, FABRICATION OR
REPROCESSING AND WHICH IS SUBSEQUENTLY RE-
TRANSFERRED INTO THE JURISDICTION OF SPAIN,
WITHIN TWO WEEKS OF SUCH RETRANSFER.

(B) THE NOTIFICATION OF TRANSFERS MAY ALSO BE MADE JOINTLY BY SPAIN AND THE STATE PROVIDING THE NUCLEAR MATERIAL. THE AGENCY MAY OBTAIN INFORMATION FROM THAT STATE IN CONNECTION WITH THE IMPLEMENTATION OF THIS AGREEMENT.

(C) TRANSFERS OF NUCLEAR MATERIALS IN QUANTITIES NOT EXCEEDING 0.1 EFFECTIVE KILOGRAMS MAY BE NOTIFIED AT QUARTERLY INTERVALS.

SECTION 7. SPAIN SHALL NOTIFY THE AGENCY, BY MEANS OF REPORTS IN ACCORDANCE WITH THE SAFEGUARDS DOCUMENT AND THE SUBSIDIARY ARRANGEMENTS PROVIDED FOR IN SECTION 15 OF ANY SPECIAL FISSIONABLE MATERIAL PRODUCED DURING THE PERIOD COVERED BY THE REPORT AND REQUIRED TO BE LISTED IN THE INVENTORY. UPON RECEIPT BY THE AGENCY OF THE NOTIFICATION, UNCLASSIFIED

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PAGE 02 IAEA V 01564 02 OF 03 241524Z

SUCH PRODUCED NUCLEAR MATERIAL SHALL BE SO LISTED. APPROPRIATE ADJUSTMENTS IN THE AMOUNTS APPEARING IN THE INVENTORY MAY BE MADE BY AGREEMENT BETWEEN SPAIN AND THE AGENCY, BUT PENDING SUCH AGREEMENT THE RESULTS OF THE AGENCY'S VERIFICATION SHALL BE USED.

TRANSFERS OF NUCLEAR MATERIAL

SECTION 8. SPAIN SHALL INFORM THE AGENCY OF ITS INTENTION TO TRANSFER NUCLEAR MATERIAL LISTED IN THE MAIN PART OF THE INVENTORY TO A FACILITY OR LOCATION WITHIN ITS JURISDICTION WHICH IS NOT LISTED IN THE INVENTORY, AND SHALL PROVIDE TO THE AGENCY SUFFICIENT INFORMATION TO ENABLE IT TO DETERMINE WHETHER, AND UNDER WHAT CONDITIONS, IT CAN APPLY SAFEGUARDS TO THE NUCLEAR MATERIAL AFTER TRANSFER TO SUCH A FACILITY OR LOCATION. THE NUCLEAR MATERIAL SHALL NOT BE TRANSFERRED UNTIL ALL THE NECESSARY ARRANGEMENTS WITH THE AGENCY TO THIS END HAVE BEEN CONCLUDED.

SECTION 9. SPAIN SHALL NOTIFY THE AGENCY OF ANY INTENDED TRANSFER OF NUCLEAR MATERIAL LISTED IN THE MAIN PART OF THE INVENTORY TO A RECIPIENT WHICH IS NOT UNDER THE JURISDICTION OF SPAIN. SUCH NUCLEAR MATERIAL MAY BE TRANSFERRED ONLY IN ACCORDANCE WITH PARAGRAPH 28(A), (B) OR (C) OF THE SAFEGUARDS DOCUMENT. UPON TRANSFER THE NUCLEAR MATERIAL IN QUESTION SHALL BE REMOVED FROM THE INVENTORY.

CONTENTS OF NOTIFICATIONS AND REPORTS

SECTION 10. THE NOTIFICATIONS AND REPORTS MADE PURSUANT TO SECTIONS 6 TO 9 SHALL SPECIFY, AS PROVIDED FOR IN THE SUBSIDIARY ARRANGEMENTS, THE NUCLEAR AND CHEMICAL COMPOSITION,

THE PHYSICAL FORM AND THE QUANTITY OF THE NUCLEAR MATERIAL, THE DATE OF RECEIPT, THE LOCATION, THE IDENTIFICATION OF THE CONSIGNOR AND CONSIGNEE AND ANY OTHER RELEVANT INFORMATION. IN RESPECT OF ANY NUCLEAR FACILITY TO BE LISTED IN THE SUBSIDIARY PART OF THE INVENTORY THE TYPE AND CAPACITY AND ANY OTHER RELEVANT INFORMATION SHALL BE NOTIFIED.

EXEMPTION AND SUSPENSION

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PAGE 03 IAEA V 01564 02 OF 03 241524Z

SECTION 11. THE AGENCY SHALL EXEMPT NUCLEAR MATERIAL FROM SAFEGUARDS UNDER THE CONDITIONS SPECIFIED IN PARAGRAPH 21, 22 OR 23, AND SHALL SUSPEND SAFEGUARDS WITH REGARD TO NUCLEAR MATERIAL UNDER THE CONDITIONS SPECIFIED IN PARAGRAPH 24 OR 25 OF THE SAFEGUARDS DOCUMENT. UPON SUCH EXEMPTION OR SUSPENSION THE NUCLEAR MATERIAL AFFECTED SHALL BE REMOVED FROM THE INVENTORY.

SAFEGUARDS PROCEDURES

SECTION 13. IN APPLYING SAFEGUARDS, THE AGENCY SHALL OBSERVE THE PRINCIPLES SET FORTH IN PARAGRAPHS 9 TO 14 OF THE SAFEGUARDS DOCUMENT.

SECTION 14. THE PROCEDURES TO BE FOLLOWED IN THE APPLICATION OF SAFEGUARDS BY THE AGENCY UNDER THIS AGREEMENT SHALL BE THOSE SET FORTH IN PART III AND ANNEXES I AND II OF THE SAFEGUARDS DOCUMENT, AS FAR AS RELEVANT.

SUBSIDIARY ARRANGEMENTS

SECTION 15. SPAIN AND THE AGENCY SHALL MAKE SUBSIDIARY ARRANGEMENTS WHICH SHALL SPECIFY IN DETAIL, TO THE EXTENT NECESSARY TO PERMIT THE AGENCY TO FULFILL ITS RESPONSIBILITIES UNDER THIS AGREEMENT IN AN EFFECTIVE AND EFFICIENT MANNER, HOW THE PROCEDURES OF THIS AGREEMENT, INCLUDING THE PROVISIONS OF PARAGRAPH 50 OF THE SAFEGUARDS DOCUMENT, SHALL BE APPLIED. THE SUBSIDIARY ARRANGEMENTS SHALL ENTER INTO FORCE AT LEAST SIX MONTHS BEFORE THE FIRST TRANSFER OF NUCLEAR MATERIAL SUBJECT TO SAFEGUARDS UNDER THIS AGREEMENT TAKES PLACE.

SECTION 16. THE PROVISIONS OF PARAGRAPHS 1 TO 9 AND 12 TO 14 OF THE INSPECTORS DOCUMENT SHALL APPLY TO AGENCY INSPECTORS PERFORMING FUNCTIONS PURSUANT TO THIS AGREEMENT. HOWEVER, PARAGRAPH 4 OF THE INSPECTORS DOCUMENT SHALL NOT APPLY IN RESPECT OF ANY NUCLEAR FACILITY OR NUCLEAR MATERIAL TO WHICH THE AGENCY HAS ACCESS AT ALL TIMES.

SECTION 17 WITH RESPECT TO THE AGENCY, ITS INSPECTORS
AND ITS PROPERTY USED BY THEM IN PERFORMING THEIR FUNCTIONS
UNCLASSIFIED

UNCLASSIFIED

PAGE 04 IAEA V 01564 02 OF 03 241524Z

PURSUANT TO THIS AGREEMENT, SPAIN SHALL APPLY THE RELEVANT
PROVISIONS OF THE AGREEMENT ON THE PRIVILEGES AND IMMUNITIES
OF THE AGENCY.

FINANCIAL PROVISIONS

SECTION 18. EXPENSES SHALL BE BORNE AS FOLLOWS:

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PAGE 01 IAEA V 01564 03 OF 03 241608Z

47

ACTION OES-05

INFO OCT-01 EUR-12 IO-10 ISO-00 ACDA-10 CIAE-00 INR-07

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AMEMBASSY MADRID

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UNCLAS SECTION 3 OF 3 IAEA VIENNA 1564

(A) SUBJECT TO SUB-SECTION (B) BELOW, SPAIN AND THE
AGENCY SHALL EACH BEAR ANY EXPENSES INCURRED IN
THE IMPLEMENTATION OF THEIR RESPONSIBILITIES
UNDER THIS AGREEMENT;

(B) ALL SPECIAL EXPENSES INCURRED BY SPAIN OR PERSONS
UNDER ITS JURISDICTION AT THE WRITTEN REQUEST OF
THE AGENCY, ITS INSPECTORS OR OTHER OFFICIALS

SHALL BE REIMBURSED BY THE AGENCY IF SPAIN NOTIFIED THE AGENCY BEFORE THE EXPENSE IS INCURRED THAT REIMBURSEMENT WILL BE REQUIRED.

THESE PROVISIONS SHALL NOT PREJUDICE THE ALLOCATION OF EXPENSES WHICH ARE REASONABLE ATTRIBUTABLE TO A FAILURE BY EITHER SPAIN OR THE AGENCY TO COMPLY WITH THIS AGREEMENT.

SECTION 19. SPAIN SHALL ENSURE THAT ANY PROTECTION AGAINST THIRD PARTY LIABILITY, INCLUDING ANY INSURANCE OR OTHER FINANCIAL SECURITY, IN RESPECT OF A NUCLEAR INCIDENT OCCURRING IN A NUCLEAR INSTALLATION UNDER ITS JURISDICTION SHALL APPLY TO THE AGENCY AND ITS INSPECTORS WHEN CARRYING OUT THEIR FUNCTIONS UNDER THIS AGREEMENT, AS THAT PROTECTION APPLIES TO NATIONALS OF SPAIN.

UNCLASSIFIED

UNCLASSIFIED

PAGE 02 IAEA V 01564 03 OF 03 241608Z

NON-COMPLIANCE

SECTION 20. IF THE BOARD DETERMINES, IN ACCORDANCE WITH ARTICLE XXII.C OF THE STATUTE, THAT THERE HAS BEEN ANY NON-COMPLIANCE WITH THIS AGREEMENT, THE BOARD SHALL CALL UPON SPAIN TO REMEDY SUCH NON-COMPLIANCE FORTHWITH, AND SHALL MAKE SUCH REPORTS AS THE BOARD DEEMS APPROPRIATE. IN THE EVENT OF FAILURE BY SPAIN TO TAKE FULLY CORRECTIVE ACTION WITHIN A REASONABLE TIME THE BOARD MAY TAKE ANY OTHER MEASURES PROVIDED FOR IN ARTICLE XXII.C OF THE STATUTE. THE AGENCY SHALL PROMPTLY NOTIFY SPAIN IN THE EVENT OF ANY DETERMINATION BY THE BOARD PURSUANT TO THIS SECTION.

SETTLEMENT OF DISPUTES

SECTION 21. ANY DISPUTE ARISING OUT OF THE INTERPRETATION OR APPLICATION OF THIS AGREEMENT WHICH IS NOT SETTLED BY NEGOTIATION OR ANOTHER PROCEDURE AGREED TO BY SPAIN AND THE AGENCY, SHALL ON THE REQUEST OF EITHER SPAIN OR THE AGENCY BE SUBMITTED TO AN ARBITRAL TRIBUNAL COMPOSED AS FOLLOWS: SPAIN AND THE AGENCY SHALL EACH DESIGNATE ONE ARBITRATOR, AND THE TWO ARBITRATORS SO DESIGNATED SHALL ELECT A THIRD, WHO SHALL BE THE CHAIRMAN. IF WITHIN THIRTY DAYS OF THE REQUEST FOR ARBITRATION EITHER SPAIN OR THE AGENCY HAS NOT DESIGNATED AN ARBITRATOR, SPAIN OR THE AGENCY MAY REQUEST THE PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE TO APPOINT AN ARBITRATOR. THE SAME PROCEDURE SHALL APPLY IF, WITHIN THIRTY DAYS OF THE DESIGNATION OR APPOINTMENT OF THE SECOND ARBITRATOR, THE THIRD ARBITRATOR HAS NOT BEEN ELECTED. A MAJORITY OF THE MEMBERS OF THE ARBITRAL TRIBUNAL SHALL CONSTITUTE A QUORUM, AND ALL DECISIONS SHALL BE MADE BY MAJORITY VOTE. THE ARBITRAL PROCEDURE SHALL BE FIXED BY

THE TRIBUNAL. THE DECISIONS OF THE TRIBUNAL, INCLUDING ALL RULINGS CONCERNING ITS CONSTITUTION, PROCEDURE, JURISDICTION AND THE DIVISION OF THE EXPENSES OF ARBITRATION BETWEEN SPAIN AND THE AGENCY, SHALL BE BINDING ON SPAIN AND THE AGENCY. THE REMUNERATION OF THE ARBITRATORS SHALL BE DETERMINED ON THE SAME BASIS AS THAT OF AD HOC JUDGES OF THE INTERNATIONAL COURT OF JUSTICE.

UNCLASSIFIED

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PAGE 03 IAEA V 01564 03 OF 03 241608Z

SECTION 22. DECISIONS OF THE BOARD CONCERNING THE IMPLEMENTATION OF THIS AGREEMENT, EXCEPT SUCH AS RELATE ONLY TO SECTIONS 18 AND 19, SHALL, IF THEY SO PROVIDE, BE GIVEN EFFECT IMMEDIATELY BY SPAIN AND THE AGENCY PENDING THE FINAL SETTLEMENT OF ANY DISPUTE.

AMENDMENTS, ENTRY INTO FORCE AND DURATION

SECTION 23. SPAIN AND THE AGENCY SHALL, AT THE REQUEST OF EITHER OF THEM, CONSULT ABOUT AMENDING THIS AGREEMENT. IF THE BOARD DECIDES TO MAKE ANY CHANGE IN THE SAFEGUARDS OR IN THE INSPECTORS DOCUMENT, THIS AGREEMENT SHALL BE AMENDED, IF SPAIN SO REQUESTS, TO TAKE ACCOUNT OF SUCH CHANGE.

SECTION 24. THIS AGREEMENT SHALL ENTER INTO FORCE UPON SIGNATURE BY OR FOR THE DIRECTOR GENERAL OF THE AGENCY AND THE AUTHORIZED REPRESENTATIVE OF SPAIN. IT SHALL REMAIN IN FORCE UNTIL SAFEGUARDS ON ALL NUCLEAR MATERIAL SUPPLIED BY THE SOVIET UNION AND ANY OTHER NUCLEAR MATERIAL LISTED IN THE MAIN PART OF THE INVENTORY, AS WELL AS ANY SPECIAL FISSIONABLE PRODUCED IN OR BY THE USE OF SUCH MATERIAL, INCLUDING SUBSEQUENT GENERATIONS OF SUCH SPECIAL FISSIONABLE MATERIAL, HAVE BEEN TERMINATED IN ACCORDANCE WITH THIS AGREEMENT.

DONE IN VIENNA ON THE DAY OF 1975 IN
DUPLICATE IN THE SPANISH LANGUAGE.TAPE

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: AGREEMENT DRAFT, NUCLEAR AGREEMENTS, NUCLEAR SAFEGUARDS, NUCLEAR WEAPONS
Control Number: n/a
Copy: SINGLE
Draft Date: 24 FEB 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975IAEAV01564
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750065-0744
From: IAEA VIENNA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750219/aaaaarbj.tel
Line Count: 481
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION OES
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 9
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: CunninFX
Review Comment: n/a
Review Content Flags:
Review Date: 19 MAY 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <19 MAY 2003 by RuthemTJ>; APPROVED <05 JAN 2004 by CunninFX>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: TEXT OF IAEA/SPAIN SAFEGUARDS AGREEMENT DRAFT AGREEMENT BETWEEN THE INTERNATIONAL ATOMIC ENERGY
TAGS: TECH, PARM, SP, US, IAEA
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006